

*Letter
February 17, 1954*

LAW LIBRARY

ARIZONA ATTORNEY GENERAL

February 17, 1954
Letter Opinion
No. 54-31-L

Mr. Edward (Ed) Massey
State Mine Inspector
Capitol Building
Phoenix, Arizona

Re: The authority of the State
Mine Dust Engineer over
open pit mining.

Dear Mr. Massey:

The answers to the questions raised in your letter of January 31, 1954 require interpretation of the provisions of Chapter 65, Art. 2, A.C.A. 1939, as amended.

Section 65-232, A.C.A. 1939, as amended, provides for the appointment of a Deputy Mine Inspector to be known as the State Mine Dust Engineer. Section 65-231, A.C.A. 1939, as amended, specifically defines hazardous dust conditions and other words and phrases used in following sections. Section 65-233, A.C.A. 1939, as amended, provides for the inspection of mines by the said State Mine Dust Engineer. It prescribes the procedure to be followed in correcting hazardous dust conditions.

However, Section 65-231, A.C.A. 1939, as amended, defines mines as "'Mine' shall mean shafts, tunnels, entries, winzes, raises, stopes, and other underground working places." This narrow definition applies only to Sections 65-231 - 65-235, A.C.A. 1939, as amended.

In view of this definition, it is our opinion that the provisions of the dust control act and the powers of the State Mine Dust Engineer are limited to the correction of hazardous dust conditions in underground mines. Open pit mines are not subject to the authority of the State Mine Dust Engineer when he acts in his capacity as such in enforcing the provisions of Section 65-233, A.C.A. 1939, as amended. Hence, in order to enforce safety regulations pertaining to dust conditions in open pit mines, the State Mine Inspector and his deputies will, therefore, have to act pursuant to the more general provisions of Section 65-206, A.C.A. 1939, in cases where the mine is determined to be in dangerous condition.

Mr. Edward (Ed) Massey
State Mine Inspector

February 17, 1954
Page Two

If the State Mine Inspector or his deputy determines that a certain manner of drilling blast holes in an open pit mine is dangerous, he may notify the mine operator or his agent in charge that such condition exists and that certain changes should be made, within a certain time, to correct the dangerous condition as provided for in Section 65-206, supra.

In the event the mine operator or his agent in charge does not comply with such notice, the Mine Inspector should order that the mine be closed and all operations be ceased until the defects are remedied. If the operator disobeys such order, he is guilty of a misdemeanor. In addition, the Mine Inspector may also initiate civil action to enforce compliance with his order to close the mine.

In the event you have any other questions regarding this matter, please do not hesitate to call them to our attention.

Yours very truly,

JUC:jlb

JOSEPH U. CRACCHIOLO
Assistant to the
Attorney General